

### REMARKS

Claims 11, 13-15, 17 and 19 have been cancelled, and claims 7 and 8 have been amended to more definitely set forth the invention and obviate the rejections. Support for the amendment of claim 7 is inherently provided in original claim 7. Support for the amendment of claim 8 can be found in Figures 1-5. The present amendment is deemed not to introduce new matter. Claims 7-10, 12, 16 and 18 remain in the application.

Reconsideration is respectfully requested of the rejection of claims 7-10, 12, 16, and 18 under 35 U.S.C. 103(a) as being unpatentable over Moss (USP 4,141,479), in view of Wall (USP 5,277,466).

The Moss reference discloses a litter retrieving device for retrieving both containers and flat articles. As shown in Figure 1, the litter retrieving device 2 of Moss is comprised of a semi-cylindrical element 4. "The semi-cylindrical element 4 includes one or more piercing elements 6 located within the inner periphery of the semi-cylindrical element." (Column 3, lines 22-23). Further, "[a] flanged lip 10 is provided as an extension along a side of the semi-cylindrical element. The flanged lip 10 includes one or more piercing elements 12 which extend below the lower most edges 8 and 20 of the semi-cylindrical element." (Column 3, lines 27-30).

Importantly, Moss states that "[i]n operation, when it is desired to retrieve a semi-rigid container, the operator holding the handle merely places the semi-cylindrical element over the container and the container is thus immediately and automatically entrapped by the semi-cylindrical element without any mechanical manipulation by the operator." (Column 3, lines 52-54). "The container is now entrapped by the lower portion

26, 26 such that as the litter retriever 2 is thrust against the container, the piercing elements 6 penetrate the container without any possibility of the container slipping away from the piercing elements." (Column 3, lines 59-64).

In contrast, as called for in amended base claim 7 herein, the present invention provides a friction grip fireplace tool comprising *friction ridges* disposed on the middle portions of the first straight portion and second straight portion, spaced at intervals along the middle portions thereof, of the inner perimeter of said open-jawed mouth, said friction ridges creating a **non-piercing** friction effect upon an object disposed within the inner perimeter of the open end of said open-jawed mouth when the first straight portion and second straight portion are urged apart by said object. This "non-piercing friction effect", in combination with the spring-like effect provided by the unary, v-shaped, **flexible** open-jawed mouth, enables a user of the fireplace tool of the present invention to lift, move, reposition and release objects without manipulating any moving parts.

The semi-cylindrical element of the Moss device as shown in Figures 1, 2, and 3, which the Examiner equates to the unary, v-shaped, flexible open-jawed mouth of the fireplace tool of the present invention, is neither v-shaped nor flexible. In fact, the description thereof as "semi-cylindrical" clearly distinguishes same from a "v-shaped" element as claimed herein.

Furthermore, the mouth of Moss' device has no friction ridges disposed on the middle portions of the first straight portion and the second straight portion of the open-jawed mouth. Specifically, there is nothing in Moss that would equate to "friction ridges spaced at intervals along the middle portions of the inner perimeter of said open-jawed mouth ..." (claim 7.b). Instead, as illustrated in Figures 1-3, the Moss device comprises

piercing elements 6 and 12, aligned vertically at positions on the concave surface of the semi-cylindrical mouth.

These piercing elements 6, 12, facilitate capture of objects by piercing them (NOT by frictionally gripping them), and are not disposed on the straight portions of the inside of the mouth (as are the friction ridges claimed herein). In particular, the piercing elements 6, 12, CANNOT frictionally grip and easily release large, heavy objects, as is possible with the fireplace tool of the present invention, as the piercing elements 6, 12 merely act to pierce and hold small objects, such as rubbish, cans, etc.

As the Examiner has recognized, the Moss reference fails to disclose a device having a spring-like effect when urged apart, which constitutes an important element or aspect of the present invention. In particular, the semi-cylindrical shape of the mouth of Moss device is rigid, and fails to exhibit any spring-like effect to grip and hold an object, relying instead on the piercing effect of the piercing elements 6, 12, to capture objects. To cure this deficiency, the Examiner has cited the secondary reference of Wall.

The Wall reference discloses a golf ball retriever. As illustrated in Figures 1-8, the golf ball retriever 10 is comprised of a resilient wire 14, which is basically twisted into a loop shape appropriate to allow a golf ball to be pressed into same. In particular, the "[f]lexibility of resilient wire 14 allows golf ball 15 to squeeze through or between the slightly smaller loops 30 and 31 using a minimal amount of force. Golf ball 15 then becomes cradled between loops 30 and 31 and can now be carried away by retriever 10" (Column 3, lines 25-28). "Each loop has a space slightly smaller than the diameter of a golf ball and the distance between loops is also spaced slightly smaller than the diameter of a golf ball." (Column 1, lines 55-58).

Unlike the present invention, the resilient wire 14 of Wall has no friction ridges or any other friction-enhancing features, to provide a gripping effect. As such, the Wall device is limited to very small, light weight objects of a specific size, specifically cylindrical objects that fit within the loops formed by the resilient wire 14. Such a configuration is wholly inapplicable to the gripping, moving and easy release of objects such as logs. Thus, it is respectfully submitted that that the mere general teaching of "a resilient material" fails to constitute any teaching or suggestion whatsoever of the spring-like effect provided by the unary, v-shaped, flexible open-jawed mouth of the fireplace tool of the present invention, as alleged by the Examiner. Rather, that teaching comes only from the present invention, and constitutes an important element or aspect thereof.

With regard to the Examiners comments concerning claim 8, the wedge shaped tip 12 referred to by the Examiner is, in fact, the piercing element attached to the flanged lip. The flanged lip is aligned nearly perpendicular to the handle of the device, with the piercing element aligned perpendicular to the flanged lip, at the end of the lip away from the mouth of the tool. Thus, the piercing element 12 does not correspond to the claimed wedge-shaped tip of the fireplace tool, which is simply an in-line extension of one straight portion of the open-jawed mouth. To more definitely define this feature of the present invention, and more clearly distinguish the present invention from the cited prior art, claim 8 has been amended herein to now state that the wedge-shaped tip is "disposed as an in-line extension of the first end of the first straight portion" of the device. It is believed that this limitation now clearly distinguishes from the prior art of record.

The structure of the Moss device will not support the gripping of objects such as fireplace logs, regardless of the resiliency of the material from which it is made. Further,

Wall fails to teach or suggest providing friction ridges spaced at intervals around the inner perimeter of an open-jawed mouth to enhance gripping power, such that heavy objects of various sizes (such as fireplace logs) can be gripped and lifted. Neither Moss nor Wall, alone or in combination, suggest or teach that a v-shaped, open-jawed mouth made of resilient material, having its inner perimeter lined with friction ridges, will allow a heavy object, such as a fireplace log, to be gripped and lifted by one person when the mouth is urged onto the object. Rather, this teaching comes only from the present invention, and constitutes an important element or aspect thereof.

Although the Moss and Wall reference, either alone or combination, fail to teach or suggest the fireplace tool of the present invention, to further distinguish from the Moss reference, base claim 7 has been amended hereto to now call for the unary, v-shaped open-jawed mouth to be "flexible". This limitation, which is inherently supported by the description of the mouth as exhibiting a spring-like effect upon objects gripped thereby, clearly distinguishes the mouth of the present invention from the rigid semi-cylindrical element of Moss. Further, the Wall device is incapable of providing the superior gripping power achieved by the present invention and, rather, can only grasp small objects, such as golf balls.

In view of the amendments made herein, as well as the deficiencies of the cited Moss and Wall references pointed out above, it is respectfully submitted that the combination of references fail to render unpatentable the fireplace tool now called for herein. Thus, it is believed that the Examiner would be justified in no longer maintaining the rejection. Withdrawal of the rejection is accordingly respectfully requested.

Reconsideration is respectfully requested of the rejection of claims 16 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moss in view of Wall, and further in view of US Patent Application Publication No. 2005/0110289 to Myers.

The cited Moss and Wall references are discussed in detail above.

The Myers reference discloses a dual-function fireplace poker, which functions as both a rigid conventional fireplace poker and a bellows. The Examiner has cited the Myers reference merely to provide a teaching of a threaded coupling to connect the jaw, rod and handgrip together, as called for in dependent claims 16 and 18 herein. However, claims 16 and 18 are dependent upon amended base claim 7.

As discussed above, the Moss or Wall references, either alone or in combination, fail to teach the fireplace tool of the present invention as called for in amended base claim 7 herein. It is respectfully submitted that the Myers reference fails to cure the deficiencies of the cited Moss and Wall reference. Therefore it is believed that the combination of the Moss, Wall and Myers references likewise fails to render the claims of the instant application unpatentable. Withdrawal of the rejection is accordingly respectfully requested.

The application is now believed to be in condition for allowance and early action and allowance thereof is accordingly respectfully requested. If there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner call the undersigned at the number listed below to resolve any problems.

Respectfully yours,

TOWNSEND & BANTA

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**CERTIFICATE OF TRANSMISSION**

I hereby certify that this facsimile transmission, consisting of an 11-page Amendment, in U.S. patent application Serial No. 10/829,080, filed on April 22, 2004, is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax no. 571-273-8300) on April 9, 2007.

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